DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 06-0364
Utility Receipts Tax
For Tax Years 2003-05

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ISSUES

I. **Utility Receipts Tax—**Statutory Interpretation of IC § 6-2.3-1-4.

Authority: IC § 6-2.3-1-4; IC § 6-2.3-1-6; IC § 6-2.3-3-4; IC § 6-8.1-5-1; 170 IAC 7-1.1-11; 47 C.F.R. § 54.712 (2005); 47 C.F.R. § 61.3 (2005); 47 C.F.R. § 69.131 (2005); 47 C.F.R. § 69.158 (2005); *Horseshoe Hammond, Inc. v. Indiana Dep't of State Revenue*, 865 N.E.2d 725 (Ind. Tax Ct. 2007), *transfer denied*, 2007 Ind. Lexis 641; *Mynsberge v. Indiana Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Poehlman v. Feferman*, 717 N.E. 2d 578 (Ind. 1999); Order, Cause No. 40785 (Ind. Util. Regulatory Comm'n June 30, 1998); Federal Communications Commission Consumer & Governmental Affairs Bureau, *Understanding Your Telephone Bill*, http://www.fcc.gov/cgb/consumerfacts/understanding.html, (last accessed on September 13, 2007); NECA, *Participation Order Form*, http://www.neca.org/media/T4_Participation_Pricing.pdf (last access on Sept. 13, 2007); NECA, *Tariff 5 - Access Services*, http://www.neca.org /source/NECA_AccessSupport_208.asp (last accessed on Sept. 13, 2007); Black's Law Dictionary (8th Ed.); Webster's Third New Int'l Dictionary.

Taxpayer protests the imposition of utility receipts tax on receipts relating to the federal and state tariff and revenue pooling systems based upon the Department's statutory interpretation of IC § 6-2.3-1-4 and IC § 6-2.3-3-4(b).

II. **Utility Receipts Tax**—Wholesale Revenues: "Interstate Revenues-NECA."

Authority: IC § 6-2.3-3-2; IC § 6-8.1-5-1.

Taxpayer protests the imposition of utility receipts tax on receipts relating to wholesale revenues.

III. **Utility Receipts Tax**—Interstate Commerce.

Authority: IC § 6-2.3-4-2; IC § 6-8.1-5-1; *Goldberg v. Illinois Dep't of Revenue*, 488 U.S. 252 (1989); *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977).

Taxpayer protests the imposition of utility receipts tax on receipts derived from interstate commerce.

STATEMENT OF FACTS

Taxpayer is a telecommunications company providing telephone services and equipment, cellular phone equipment, cable and digital telephone services, and internet services to Indiana customers. Taxpayer did not include gross receipts received from state and federal tariff and revenue pooling "systems" for providing services in rural communities or those received from telephone accessories and equipment sales. After an audit, the Indiana Department of Revenue ("Department") assessed additional Utility Receipts Tax ("URT"), penalties, and interest for the tax years 2003, 2004, and 2005. Taxpayer protested this assessment. An administrative hearing was held, and a Letter of Findings ("LOF") was issued denying Taxpayer's protest in part and sustaining Taxpayer's protest in part. The Department found that the receipts relating to the federal and state tariff and revenue pooling systems were subject to the URT. Taxpayer requested and was granted a rehearing based upon the statutory interpretation of IC § 6-2.3-1-4 and IC § 6-2.3-3-4(b) relating to these receipts. A rehearing was held, and this Supplemental Letter of Findings results. Further facts will be supplied as required.

I. **Utility Receipts Tax**—Statutory Interpretation.

DISCUSSION

Notices of proposed assessments are prima facie evidence that the department's claim for unpaid taxes is valid**.** IC § 6-8.1-5-1(c). The taxpayer has the burden of proving that the department incorrectly imposed the assessment. *Id*.

The Department refers to the Tax Court's decision in *Mynsberge v. Indiana Dep't of State Revenue*, 716 N.E.2d 629, 632-633 (Ind. Tax Ct. 1999), for the issue of statutory interpretation:

> When the Court is confronted with a question of statutory interpretation, the Court's function is to give effect to the intent of the General Assembly in enacting the statutory provision. *See Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224, 1227 (Ind. Tax Ct. 1998). In general, the best evidence of this intent is found in the language chosen by the General Assembly. *See Associated Ins. Cos., Inc. v. Indiana Dep't of State Revenue*, 655 N.E.2d 1271, 1273 (Ind. Tax Court 1995), review denied. However, the legislative intent as ascertained from an act or statutory scheme as a whole will prevail over a strict literal reading of any one particular statutory provision. *See Department of State Revenue v. Estate of Hardy*, 703 N.E.2d 705, 710 (Ind. Tax Ct. 1998) (citing *State Natural Resources Comm'n v. AMAX Coal Co.*, 638 N.E.2d 418, 429 (Ind. 1994); *Indiana Eby-Brown v. Department of State Revenue*, 648 N.E.2d 401, 403 (Ind. Tax Ct. 1995), *review denied*). Additionally, it is presumed that the General Assembly did not intend to enact a superfluous statutory provision, *see Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 958 (Ind. Tax Ct. 1997), review denied, and therefore, the Court, when interpreting a statute, will endeavor to give meaning to every word in that statute. *See Guinn v. Light*, 558 N.E.2d 821, 823 (Ind. 1990). Finally, section 6-2.5-4-5 is a tax imposition statutory provision. Therefore, it is to be strictly construed against the imposition of tax. *See State Bd. of Tax Comm'rs v. Jewell Grain Co.*, 556 N.E.2d 920, 921 (Ind. 1990); *Tri-States Double Cola Bottling Co. v. Department of State Revenue*, 706 N.E.2d 282, 285 n.9 (Ind. Tax Ct. 1999). However, the policy of strict construction will not override the plain language of a tax imposition

provision. *Cf. Hyatt Corp. v. Department of State Revenue*, 695 N.E.2d 1051, 1053 (Ind. Tax Court 1998) (policy of strict construction should not be used to contradict plain language of a tax exemption provision), *review denied*.

A. Statutory Interpretation of IC § 6-2.3-3-4(b).

Indiana imposes URT on the "entire taxable gross receipts of a taxpayer that is a resident or domiciliary of Indiana." IC § 6-2.3-2-1.

"Gross receipts" for purposes of the Indiana's URT is defined at IC § 6-2.3-1-4 as follows:

> "Gross receipts" refers to anything of value, including cash or other tangible or intangible property that a taxpayer receives in consideration for the retail sale of utility services for consumption before deducting any costs incurred in providing the utility services.

An exclusion from the URT exists for "tax, fee, or surcharge" collections in IC § 6-2.3-3-4, as follows:

> (b) Gross receipts do not include collections by a taxpayer of a **tax, fee, or surcharge** that is:
> (1) **approved by** the Federal Communications Commission or the utility regulatory commission; and
> (2) stated separately as an addition to the price of telecommunications services sold at retail. (**Emphasis Added**).

In other words, receipts that result from the collection of a "tax, fee, or surcharge" that was approved by the Federal Communications Commission ("FCC") or the Indiana Utility Regulatory Commission ("IURC") and is stated as a separate line item on the customers' bill are exempt from the URT.

Taxpayer asserts that the Department's interpretation, as stated in the original Letter of Findings, of the words "surcharge" and "addition to the price of the telecommunications services sold at retail" in IC § 6-2.3-3-4 does not represent the intent of the legislature or the plain meaning of the statue for receipts from "end user charges" in its "End User Revenue-Interstate," "Interstate Revenue-FUSC," and "End User Revenue-Intrastate" accounts.

1. "Surcharge" or "Fee"

Taxpayer defines a "surcharge" as provided in Black's Law Dictionary 1482 (8th Ed.) as "an additional tax, charge, or cost" or as provided in Webster's Third New Int'l Dictionary as "a charge in excess of the usual or normal amount: an additional tax, cost, or impost." Taxpayer defines a "fee" as provided in Black's Law Dictionary 647 (8th Ed.) as "a charge for labor or services" or as provided in Webster's Third New Int'l Dictionary as "a charge fixed by law . . . for certain privileges or services." Taxpayer maintains that the "end user charges" would meet either of these definitions of surcharge or fee since the charges are stated separately on the customer's bill.

Under Taxpayer's definition anything listed separately on the bill would meet the generic definition of fee or surcharge and would be excluded from URT. Taxpayer's interpretation of a "fee or surcharge" would not be limited to those "approved by the Federal Communications Commission or the utility regulatory commission" as a "tax, fee, or surcharge" as required by the statute. Thus, Taxpayer's interpretation of the statue does not give the full effect of every word in IC § 6-2.3-3-4 and makes the words "approved by" superfluous statutory language. As stated previously, in *Mynsberge* the tax court found "it is presumed that the General Assembly did not intend to enact a superfluous statutory provision . . . and therefore, the Court, when interpreting a statute, will endeavor to give meaning to every word in that statute." *Mynsberge*, 716 N.E.2d at 633.

The Department's interpretation of IC § 6-2.3-3-4 gives the plain meaning and effect to every word of the statute. The Department in its plain meaning interpretation of IC § 6-2.3-3-4 looks, as the code suggests, to the statutes and authorities of the FCC and IURC to see how the charges were adopted by the FCC and IURC. The FCC and IURC both explicitly adopted the "end user charges" as "charges." *See* 47 C.F.R. § 61.3(j) (2005) (adopting the NECA end user access charge as a "charge"); 47 C.F.R. §§ 69.131, 158 (2005) (adopting the universal service end user charge as a "charge"); and Order, Cause No. 40785 slip op. at 17 (Ind. Util. Regulatory Comm'n June 30, 1998) (adopting the intrastate access charge as a "charge"). Since the end user charges were not approved as "surcharge or fee," the end user charges are subject to the URT.

Therefore, Taxpayer's protest is respectfully denied.

2. "Addition to the Price of Telecommunications Services Sold at Retail"

Taxpayer asserts that only the charge on its bill for the standard monthly rate represents the retail service provided by taxpayer, which are subject to the URT. Taxpayer maintains that any other charges listed on the bill are for a non-retail service of the Taxpayer that is mandated by the FCC or IURC.

First, the "end user charges" are not charges mandated by the FCC or IURC. The statutes and authorities of the FCC and IURC both explicitly approved a discretionary charge to the customer's bill. *See* 47 C.F.R. § 61.3(j) (2005) (providing the telecommunications "may" include an "end user access charge" on the customer's bill.); 47 C.F.R. § 54.712(a) (2005) (providing USF contributions "may be recovered" by an universal service "end user charge"); and Order, Cause No. 40785 slip op. at 17 (Ind. Util. Regulatory Comm'n June 30, 1998) (explaining that IURC is not adopting an "end user charge" that is "mandatory.")

In fact, the FCC in "Understanding Your Telephone Bill," provided on its website as a guide to consumers to understand telephone bills, in relevant part, as follows:

> The FCC allows local telephone companies to bill customers for a portion of the costs of providing access. **These charges are not a government charge or tax.** The maximum allowable access charges per telephone line are set by the FCC, but local telephone companies are free to charge less or not at all. Access charges for second or additional lines at the same residence are higher than the charges for the primary line. These charges can be describe by your telephone bill as "Federal access charge," "Customer or Subscriber Line Charge," "Interstate Access Charge," etc.

> State public service commissions regulate access charges for intrastate (within a state) calls. In some states subscriber lines charge may appear on customer bills.
>
> . . .
>
> Although not required to do so, many service providers chose to pass their contribution costs to the USF on to their customers in the form of a line time on customer bills . . . .

Federal Communications Commission Consumer & Governmental Affairs Bureau, *Understanding Your Telephone Bill*, http://www.fcc.gov/cgb/consumerfacts/understanding.html, *1 and 2 (last accessed on September 13, 2007) (**Emphasis in original**). Thus, the "end user charges" as shown as line item charges on the customer bills are not mandated by the FCC, but are a discretionary charge for service.

Second, nothing in the URT statutes limits gross receipts to only those received for the main or basic service provided as suggested by Taxpayer. However, even if Taxpayer interpretation is used, the Indiana General Assembly defines "basic telecommunications service" to "include, at a minimum . . . access to interexchange service" and "switched and special access service." IC § 8-1-2.6-0.1(b)(3) and IC § 8-1-2.6-0.3(a)(4). Moreover, 170 IAC 7-1.1-11 provides, "[T]he minimum grade of local exchange telecommunications service that may be provided within Indiana shall include . . . local service [and]. . . [a]ccess to interexchange services." Furthermore, the Indiana Supreme Court has established "a strong presumption that when the legislature enacted a particular piece of legislation, it was aware of existing statutes relating to the same subject." *Poehlman v. Feferman*, 717 N.E. 2d 578, 582 (Ind. 1999). Therefore, since the end user access charges are for a telecommunications service provided by Taxpayer, the receipts are from a utility service that are subject to the URT.

Finally, the end user charges are for a retail transaction. Taxpayer is providing a telecommunications service to an end user who pays Taxpayer for providing a telecommunications service. Thus, the end user charges are receipts from a retail sale of a utility service subject to the URT.

Therefore, Taxpayer's protest is respectfully denied.

B. Statutory Interpretation of IC § 6-2.3-1-4.

Indiana imposes URT on the "entire taxable gross receipts of a taxpayer that is a resident or domiciliary of Indiana." IC § 6-2.3-2-1.

"Gross receipts" for purposes of the Indiana's URT is defined at IC § 6-2.3-1-4 as follows:

> "Gross receipts" refers to anything of value, including cash or other tangible or intangible property that a taxpayer receives in consideration for the retail sale of utility services for consumption before deducting any costs incurred in providing the utility services.

"Receives," as defined for the purposes of the Indiana's URT, includes "the payment of a taxpayer's expenses, debts, or other obligations by a third party for the taxpayer's direct benefit." IC § 6-2.3-1-6(2).

In summary, the URT is an income tax imposed on the receipts received for providing utility services for consumption. The utility services subject to tax include telecommunication services. When a taxpayer provides utility services and directly benefits from something it receives for its expenses, debts, or obligations, then that taxpayer obtains gross receipts that are subject to the URT.

Taxpayer asserts that the Department's interpretation, as stated in the original Letter of Findings, of the words "in consideration for the retail sale of utility service for consumption" in IC § 6-2.3-1-4 does not represent the intent of the legislature or the plain meaning of the statue for the receipts in its "Interstate Revenues-NECA," "Interstate Revenues-USF," "Interstate Revenues-TDWF," and "Indiana High Cost Fund" accounts, which Taxpayer receives in distributions from the federal and state tariff and revenue pooling systems.

Even though Taxpayer agrees that it "receives" and "benefits from" the funds from the federal and state tariff and revenue pooling systems, Taxpayer maintains that its receipt of the funds is not subject to the URT because the funds are not received "in consideration for the retail sale of utility service for consumption" as required by IC § 6-2.3-1-4. Taxpayer asserts that the receipts are not payments received from a customer for the sale of retail telecommunications services, but are subsidies separate and apart from the retail services.

In *Horseshoe Hammond, Inc. v. Indiana Dep't of State Revenue,* 865 N.E.2d 725, 729 (Ind. Tax Ct. 2007), the Tax Court defined consideration as "a bargained-for exchange," which "means that the essence of the transaction must involve an exchange that has been agreed to."

Taxpayer prefaces its argument on the fact that the funds are received from the pooling system and not from the customer. Taxpayer asserts that "a bargain-for exchange" does not exist between Taxpayer and customer for these receipts because the customer does not pay them." Taxpayer's interpretation ignores the language of IC § 6-2.3-1-6(2) and would render it useless. If the "in consideration" language was limited to the consideration between customers and Taxpayer, then third party payments would never be received "in consideration," let alone "in consideration for the retail sale of utility services for consumption." As stated previously, in *Mynsberge* the Tax Court found "the legislative intent as ascertained from an act or statutory scheme as a whole will prevail over a strict literal reading of any one particular statutory provision." *Mynsberge,* 716 N.E.2d 629 at 633.

Accordingly, when IC § 6-2.3-1-4 and IC § 6-2.3-1-6(2) are read together, the statutory scheme of the URT imposes URT upon gross receipts received from a third party to cover the taxpayer's expenses or costs in providing the retail sale of utility services for consumption. Thus, the relationship of all the parties involved must be examined.

For the NECA pool, Taxpayer signs an agreement and pays an annual fee to become a member of the pool. *See* NECA, *Participation Order Form*, http://www.neca.org/media/T4_Participation_Pricing.pdf (last access on Sept. 13, 2007). As a member of the NECA pool, Taxpayer agrees to submit its revenue and cost information for providing telecommunications

services to its customers to the NECA, and the NECA agrees to develop and file Taxpayer's tariffs with the FCC. *See* NECA, *Tariff 5 - Access Services*, http://www.neca.org/source/NECA_AccessSupport_208.asp (last accessed on Sept. 13, 2007). The NECA agrees to make distributions to Taxpayer's with certain costs in providing the services to its customers. *Id*. Taxpayer's membership with the NECA gives Taxpayer the right to receive these distributions from the NECA pool based upon Taxpayer's customers to which it provided telecommunication services. *See Id*.

For the USF and IURC pools, the FCC and IURC have made distributions available to certain telephone companies that service customers located in high cost, typically rural, areas. Taxpayer reports its revenue and cost information for providing telecommunications services to its customers to the USF and IURC pools. Taxpayer received funds from the USF/IURC pooling systems because Taxpayer provides telecommunication services--i.e., "the retail sale of the utility service for consumption"--to its customers located in rural areas. If Taxpayer were not providing telecommunication services to these rural customers, then the USF and IURC pools would not make a distribution to Taxpayer.

In summary, Taxpayer agrees to provide telecommunication services to customers who agree to pay for telecommunication services. Taxpayer agrees to submit its revenue and costs information for providing telecommunications services to the pooling systems. The pooling systems agree to make distributions based upon the information submitted. Taxpayer receives the distributions from the pooling systems to cover the costs of providing services to certain customers. The pooling systems make the distributions to Taxpayer because it provides "the retail sale of the utility service for consumption" to certain high cost customers. Taxpayer would not receive these distributions, but for the retail sale of the utility service to those customers.

The Department's interpretation of IC § 6-2.3-1-4 gives the plain meaning to the words of the statute. Moreover, the Department's interpretation of IC § 6-2.3-1-4 considers the entire statutory scheme and does not conflict with IC § 6-2.3-1-6(2) that provides for receipts from "a third party." Therefore, the receipts in "Interstate Revenues-NECA," "Interstate Revenues-USF," "Interstate Revenues-TDWF," and "Indiana High Cost Fund" accounts are receipts subject to the URT.

Therefore, Taxpayer's protest is respectfully denied.

FINDING

In summary, Taxpayer's protest of subparts A and B are respectfully denied.

II. Utility Receipts Tax—Wholesale Revenues: "Interstate Revenues-NECA."

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer protests the imposition of URT on receipts in the "Interstate Revenues-NECA" account. Taxpayer asserts that the receipts in this account are for wholesale revenues that are exempt from the URT.

On initial assessment, the Department determined that all the receipts in the "Interstate Revenues-NECA" account were subject to the URT. Taxpayer in its "Interstate Revenues-NECA" included all the receipts that it received from the NECA tariff and pooling system. The NECA contains multiple sub-pools, including the "Traffic Sensitive Pool" and the "Common Line Pool."

During the course of protest, Taxpayer was asked to provide information separating the receipts in "Interstate Revenues-NECA" into receipts from the "Traffic Sensitive Pool" and the "Common Line Pool." Taxpayer failed to provide the information during the original hearing. Thus, in the original Letter of Findings, Taxpayer's protest of the imposition of URT on the receipts in the "Interstate Revenues-NECA" was denied in its entirety under IC § 6-2.3-3-2.

IC § 6-2.3-3-2 provides:

> Notwithstanding any other provisions of this article, receipts that would otherwise not be taxable under this article are taxable gross receipts under this article to the extent that the amount of the nontaxable receipts are not separated from the taxable receipts on the records or returns of the taxpayer.

During the course of the rehearing, Taxpayer submitted the information separating the receipts in "Interstate Revenues-NECA" into receipts from the "Traffic Sensitive Pool" and the "Common Line Pool." The "Traffic Sensitive Pool" contains funds paid by long distance companies for use of Taxpayer's telephone lines. The long distance companies pay into the pool based upon its customer's per minute use of the lines of the local exchange carrier--i.e., taxpayer. The long distance carriers charge and receive payment from the end user--i.e., the long distance customer--for the telephone services provided. Thus, the receipts from the "Traffic Sensitive Pool" on which the department imposed URT are not income from the retail sale of a utility service and are not subject to the URT. However, the receipts from the "Common Line Pool" are from end users and are subject to the URT.

Therefore, Taxpayer's protest is sustained, subject to the results of a supplement audit, to the extent that its documentation demonstrates the Department assessed URT on the receipts from the "Traffic Sensitive Pool." Accordingly, Taxpayer's protest is denied, subject to the results of a supplemental audit, to the extent that its documentation demonstrates the Department assessed URT on receipts from the "Common Line Pool."

FINDING

Taxpayer's protest is denied in part and sustained in part subject to the results of a supplemental audit.

III. Utility Receipts Tax—Interstate Commerce.

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer protests the imposition of utility receipts tax on receipts derived from interstate commerce. Taxpayer asserts that the receipts relating to the federal tariff and revenue pooling systems are exempt under IC § 6-2.3-4-2 as receipts derived from interstate commerce.

IC § 6-2.3-4-2 provides:

> Gross receipts derived from business conducted in commerce between Indiana and either another state or territory or a foreign country are exempt from utility receipts tax to the extent the state is prohibited from taxing the gross receipts by the Constitution of the United States.

In summary, receipts that are derived from activities in interstate commerce on which the United States Constitution prohibits the Department accessing URT are exempt from URT.

Taxpayer asserts that all receipts relating to the federal tariff and revenue pooling systems are receipts derived from activities in interstate commerce and are exempt from URT.

In *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977), the United States Supreme Court found that "the mere act of carrying on a business in interstate commerce does not exempt a corporation from state taxation." *Id.* at 288. The Court found that the state tax does not violate the Commerce Clause if it can pass the following four-part test:

> [W]hen the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.

Id. at 279. The Court reasoned that "it was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing the business." *Id*. at 288 (citing *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 254 (1938)).

Additionally, in *Goldberg v. Illinois Dep't of Revenue*, 488 U.S. 252 (1989), the United States Supreme Court found that an Illinois interstate telecommunications tax based upon a gross charge did not violate the commerce clause. *Id*. at 267. The court found that the test for the "fairly apportioned" requirement is "whether [the tax] is internally and externally consistent." *Id.* at 261. The court reasoned that it has "declined to undertake the essentially legislative task of establishing a 'single constitutionally mandated method of taxation.'"

A. "End User Access Charges."

Taxpayer asserts that the "end user access charges," which are payments made for access to a local exchange carrier's facilities for the purpose of making long distance calls, are tax exempt because the charges are associated with interstate long distance.

As provided above, it is only those receipts derived from interstate commerce on which the United States Constitution prohibits the Department accessing URT that are exempt.
The "end user access charges" are paid by customers for the telecommunications service of the local exchange carrier providing access to the long distance carrier. The charge does not

represent the minutes charged for an interstate long distance call. The customer pays for this service no matter if it makes one, ten, or no long distance calls. Moreover, this service is offered to the Indiana customer, is listed on the Indiana customer's phone bill, and is paid by the Indiana customer. Thus, Indiana is the only state that could impose URT on this service charge offered to and paid for by the Indiana customer. Therefore, the mere fact that this service is associated with interstate long distance calling does not mean that it is a receipt exempt under IC § 6-2.3-4-2.

Therefore, Taxpayer's protest is respectfully denied.

B. Distributions.

Taxpayer asserts that the distribution that it receives from the federal tariff and revenue pooling systems are exempt because the charges are associated with interstate long distance.

As provided above, it is only those receipts derived from interstate commerce on which the United States Constitution prohibits the Department accessing URT that are exempt. Taxpayer receives distributions from the federal tariff and revenue pooling systems to recover the costs of providing telecommunications services to customer in high cost areas. Taxpayer offers service to the Indiana customer and receives distributions from the NECA "Common Line Pool" and the USF based upon the costs of providing service to the Indiana customers. Thus, Indiana is the only state that could impose URT, on these distributions. Therefore, the mere fact that this distribution is associated with interstate long distance calling does not mean that it is a receipt exempt under IC § 6-2.3-4-2.

Therefore, Taxpayer's protest is respectfully denied.

FINDING

In summary, Taxpayer's protest of subparts A and B are respectfully denied.

AB/WL/DK—November 13, 2007